THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.14447 AND 14934 OF 2006

DATED 15TH SEPTEMBER, 2006

BETWEEN

G.Yadaiah and another

… Petitioners

and

The Principal Secretary, Revenue Department, Government of A.P., Secretariat, Hyderabad and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.14447 AND 14934 OF 2006

COMMON ORDER:

In these two writ petitions, common question arises for consideration. This order, therefore, shall dispose of both the writ petitions. Be it also noted at the stage of Admission, as the controversy is in a narrow compass, the matters were heard finally and the respondents have also filed counter affidavits.

The petitioners in W.P.No.14447 of 2006 (hereafter called, first petition) are sons of late Lakshmaiah. They allege that the land admeasuring Acs.2.20 guntas in survey Nos.116 and 117 situated at Kokapet village of Rajendranagar Mandal of Ranga Reddy District (hereafter called, the subject land) is in their possession for over forty years, that on 02.03.1995, the fourth respondent issued notice of eviction under Section 7 of A.P.Land Encroachment Act, 1905 (Encroachment Act, for brevity), that the fourth respondent dropped further action when the petitioners requested and that though they made a representation on 11.11.2005 for regularizing the occupation in respect of the land, the Government did not pass any orders in accordance with G.O.Ms.Nos.747, dated 11.01.1996; 313, dated 22.01.1997; 1087, dated

23.12.1997; 94, dated 01.02.1999 and 419, dated 25.05.1999. It is their case that on 10.07.2006, the respondents entered into the land with police force and tried to dispossess them. Therefore, they filed the writ petition seeking a writ of Mandamus declaring the action of the respondents in trying to dispossess them from the subject land as illegal and arbitrary.

The case of the petitioner, Mende Anjamma, in W.P.No.14934 of 2006 (hereafter called, second petition) is almost similar. She alleges that she has been in possession of land admeasuring Acs.4.00 in survey No.100 of Kokapet village duly paying land revenue to the Government and that though the fourth respondent issued notice under Section 7 of the Encroachment Act on 05.12.1995, the action was dropped subsequently. She also alleges that in spite of her representation, dated 11.11.2005, to the second respondent, her occupation/possession was not regularized by the respondents but on 10.07.2006, they tried to interfere with the possession.

The Mandal Revenue Officer, Rajendranagar Mandal (MRO), has filed counter affidavit in both the cases. The counter affidavit filed in W.P.No.14447 of 2006 on 03.08.2006 *inter alia* points out that in the impugned notice, dated 02.07.1995, the land is described as situated in survey Nos.116 and 117 of Kokapet village. Presumably for this reason, the petitioners in W.P.No.14447 of 2006 filed an application being W.V.M.P.No.19846 of 2006 seeking to amend the particulars of the land mentioned in the affidavit as well as the writ petition. Be that as it is in the counter affidavit, the MRO denied the issue of notice under Section 7 of the Encroachment Act to the petitioners or their father. It is asserted that the land in survey No.116 admeasuring Acs.3.22 guntas and in survey No.117 admeasuring Acs.1.04 guntas, and the land in survey No.109 is Government land and is vacant. As per the orders dated 30.06.2006, issued by the District Collector, Ranga Reddy District, these lands have been handed over to Hyderabad Urban Development Authority (HUDA) and in the public auction held by HUDA on 20.07.2006, the lands were purchased by third parties.

The counter affidavit filed by the MRO in W.P.No.14934 of 2006 is also on similar lines. It is asserted that the land in survey No.100 claimed by the petitioner in W.P.No.14934 of 2006 is covered by the guidelines in G.O.Ms.No.1409, dated 19.08.1978, which prohibits assignment and that the land admeasuring Acs.30.25 guntas in survey No.100 situated at Kokapet village is classified in the revenue records as “Sarcari Poramboke” (Government land). These lands were handed over to HUDA, who conducted public auction on 20.07.2006. Here, it may be mentioned that HUDA is arrayed as fifth respondent in W.P.No.14934 of 2006 and it has also filed a counter affidavit corroborating the averments

made by the MRO in the counter affidavit that the land has been sold in the public auction.

Learned counsel for the petitioners submits that when once notice under Section 7 of the Encroachment Act is issued to the occupant of a Government land for eviction, unless and until an enquiry is held by the MRO as contemplated under Section 6(2) and followed by order/notice under Section 6(1) of the Encroachment Act, the petitioners cannot be evicted coercively. According to the learned counsel, due process of law requires strict adherence to the provisions of Section 6 of the Encroachment Act, without which steps to dispose of the petitioners cannot be sustained. Nextly, he would urge that the Court can draw a presumption regarding possession of the petitioners in respect of the subject land. For this, he relies on Illustration (d) to Section 114 of the Indian Evidence Act, 1872. **Per contra**, learned Assistant Government Pleader submits that the MRO never issued any notice under Section 7 of the Encroachment Act to the petitioner in W.P.No.14934 of 2006 or to the husband of the petitioner as alleged and they are concocted for the purpose of this case. Secondly, he submits that the land has been registered in the revenue record as 'Sarcari Poramboke', that it was never assigned to anybody, that nobody was in possession of the land and that it was handed over to HUDA.

There cannot be any dispute that if the petitioners are in possession of land, which is classified as 'Sarcari Poramboke' Government land, the petitioners cannot be dispossessed without due process of law contemplated under Encroachment Act. The question is whether the petitioners have placed any material to show that they are in possession of the land. There is no dispute that in proof of allegation that they are in possession of the land, the petitioners entirely depend on the typed copies of the notices under Section 7 of Encroachment Act allegedly issued to them or their predecessors. Originals thereof are not produced, nor the petitioners filed any reply affidavit denying the counter averments that the land is 'Sarcari Poramboke' land, which is already handed over to HUDA. In the absence of any reply affidavit denying the counter averments, this Court has to presume that the counter averments stand admitted.

In W.P.No.14447 of 2006, the petitioners claim to be in possession of the land admeasuring Acs.2.20 guntas in survey Nos.116 and 117 of Kokapet village. But, they filed notice under Section 7 of the Encroachment Act allegedly issued in relation to land in survey No.109 admeasuring Acs.2.00 guntas. Though, they filed an amendment application seeking to amend the survey numbers as survey No.109. This would certainly cast a doubt on the claim of the petitioners. Secondly, the notice under Section 7 of the Encroachment Act was

issued to M/s. Mungi Laxmaiah, Chakali Balaiah, Yadi Chandraiah and Avusula Kistaiah, allegedly based on which the petitioner in W.P.No.14934 of 2006 claims to be in possession. The name of the petitioner's husband, Ramulu, is not found in the said notice. Reliance is therefore placed on the Xerox copies of temporary land revenue receipts showing that during the years 1980, 1981, 1983, 1986, and 1990-1991 to 1996-1997 one Mende Ramulu paid land revenue in respect of land in survey No.100. Similarly, the petitioners in W.P.No.14447 of 2006 also produced temporary land revenue receipts for the years 1990-1991 to 1993-1994 showing that the petitioners and their father Lakshmaiah paid land revenue. These documents do not support the case of the petitioners that they were in possession of the land when the writ petitions are filed contemporaneously. In the absence of any such contemporaneous documents, the land revenue receipts do not inspire any confidence. Further, judicial notice may be taken that from 1983-1984, the land revenue has been totally abolished in the State of Andhra Pradesh and it is quite ununderstandable as to how these temporary land revenue receipts came into existence after 1983-1984.

The submission based on Illustration (d) to Section 114 of Indian Evidence Act is misconceived. When the set of things is shown to be in existence within a period shorter than such set of things shall seize to exist, Court can presume that such set of things still exist. In this case, the respondents contest that the petitioners were never in possession of the land and that they were never issued notices under Section 7 of the Encroachment Act. Unless and until, it is proved by the petitioners that the notices under Section 7 of the Encroachment Act produced by the petitioners are public documents falling under Section 74(1)(ii) of the Indian Evidence Act, the presumption under Illustration (d) to Section 114 of the Indian Evidence Act cannot be drawn.

These writ petitions are devoid of any merit and are accordingly dismissed. No costs.

(V.V.S.RAO,J)

.09.2006
pln